

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA - OAKLAND

ORDER RE: STATUTORY WITNESS FEES, TRAVEL COSTS AND LODGING EXPENSES

18 This matter comes before the Court on Defendant's application for issuance of a subpoena.
19 Defendant requests that the Court authorize issuance of a subpoena for fact witness Special Agent
20 Doreen Moore (formerly Doreen Schulz) as well as payment of fees and costs incurred by these
21 witnesses in connection with her appearance before the Court pursuant to the subpoena.

22 Federal Rule of Criminal Procedure 17(b) provides a mechanism by which a defendant who
23 is unable to pay the relevant costs and fees may apply *ex parte* for an order directing that a subpoena
24 be issued. Fed. R. Crim. P. 17(b). Specifically, Rule 17(b) states that "[u]pon a defendant's *ex parte*
25 application, the court must order that a subpoena be issued for a named witness if the defendant
26 shows an inability to pay the witness' fees and the necessity of the witness' presence for an adequate
27 defense." *Id.* If the Court orders the subpoena to be issued, the process costs and witness fees are
28 paid in the same manner as for a witness pursuant to a government subpoena. *Id.* The defendant

1 bears the burden of proving that the witness' testimony is necessary to his defense. *United States v.*
2 *Smith*, 637 F.2d 625, 627 (9th Cir. 1980).

3 In the present case, defense counsel declares that she has been appointed to represent
4 Defendant under the Criminal Justice Act, 18 U.S.C. § 3006A. Defense counsel also avers that the
5 testimony of Special Agent Doreen Moore (formerly Schulz) is necessary for a fair trial for
6 Defendant. Defendant has made the requisite showing of an inability to pay the witness' fees and the
7 necessity of the witness' presence for an adequate defense.

8 Accordingly,

9 IT IS HEREBY ORDERED THAT Defendant's request for a subpoena and witness fees and
10 costs with respect to Special Agent Doreen Moore is GRANTED. The U.S. Marshal's Office shall
11 pay statutory witness fees, travel costs and lodging expenses for Special Agent Moore.

12 IT IS SO ORDERED.

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14 Dated: 6/7/06


15 Honorable Saundra B. Armstrong
16 U.S. DISTRICT COURT JUDGE

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